

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	

**Reply Comments of AARP**

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Trevor R. Roycroft, Ph.D.  
Economic Consultant

David Certner  
Legislative Counsel and  
Legislative Policy Director  
Government Affairs  
AARP  
601 E Street, NW  
Washington, DC 20049

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## **Introduction**

AARP respectfully submits these Reply Comments for the FCC's consideration, and thanks the Commission for the opportunity to participate in this important proceeding regarding Universal Service programs. The comments received in response to the *Notice of Proposed Rulemaking* (hereinafter *NPRM*) provide useful feedback regarding the Commission's efforts to pursue its statutory Universal Service objectives.

AARP's review of comments filed reveals wide agreement with many of the positions advanced by AARP in opening comments.<sup>1</sup> However, before turning to the review of comments filed, AARP would like to draw the Commission's attention to its recent *Telehealth NPRM*,<sup>2</sup> as that NPRM illustrates why an overall cap on Universal Service programs would be bad policy.

## **The *Telehealth NPRM* illustrates why a cap would be ill-advised**

AARP applauds the Commission's efforts to pursue a telehealth pilot that would generate valuable data on applications of telecommunications and information technology to promote healthcare among low-income Americans. AARP will separately provide comments on the specific issues raised in the *Telehealth NPRM*. However, the *Telehealth NPRM* provides an excellent example of why placing an overall cap on the Universal Service Fund is a bad idea. With the *Telehealth NPRM* the Commission proposes regulatory innovation in an attempt to close the digital divide. While the telehealth pilot is only a start, AARP believes that this pilot program has the potential to identify additional measures that the Commission can take to ensure

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<sup>1</sup> AARP Comments, July 15, 2019.

<sup>2</sup> *In the Matter of Promoting Telehealth for Low-Income Consumers*, WC Docket No. 18-213, Notice of Proposed Rulemaking, July 11, 2019. Hereinafter, *Telehealth NPRM*.

that the benefits of advanced telecommunications technology are available and affordable to all Americans.

AARP noted in opening comments that capping the Universal Service Fund would not support the Commission's stated objective of closing the digital divide.<sup>3</sup> Other parties also pointed to the digital divide as a reason to not impose an overall USF cap.<sup>4</sup> As AARP noted in opening comments, an overall cap would limit regulatory innovation and the Commission's ability to respond to emerging issues that affect Universal Service objectives.<sup>5</sup> The pilot program proposed in the *Telehealth NPRM* is a good example of an appropriate policy response to an emerging issue associated with new telecommunication technologies that promote lower-cost healthcare solutions, especially in areas without access to brick and mortar healthcare facilities. AARP believes that the *Telehealth NPRM's* approach to funding the pilot would be hindered by the cap proposed in the *USF NPRM*. Because universal service programs are not now subject to an overall cap, the *Telehealth NPRM* proposes that the \$100 million budget for the telehealth pilot be funded by an increased assessment on consumers, as opposed to taking funds from existing programs.<sup>6</sup> The ability to make decisions outside of an overall cap encourages the experimentation needed to generate outcomes that are consistent with the statutory objectives that guide the Commission. The lack of an overall cap encourages the Commission's ability to

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<sup>3</sup> AARP Comments, pp. 3-5.

<sup>4</sup> CTIA Comments, p. 5; Smith Bagley Comments, pp. ii-iii; Common Cause Comments, p. 7; Common Sense Kids Action Comments, p. 5; Communications Workers of America Comments, p. 9; Sage Telecom Comments, p. 2; Gila River Telecommunications Comments, p. 4; GVNQ Consulting Comments, p. 7; NASUCA Comments, p. 5; NEA Comments, p. 7; National Rural Electric Cooperative Association Comments, pp. 6-7; National Tribal Telecommunications Association, pp. 2-3; New America's Open Technology Institute, p. 4; Public Knowledge and National Hispanic Media Coalition Comments, p. 2; Schools, Health & Libraries Broadband Coalition, p. 2.

<sup>5</sup> AARP Comments, p. 15.

<sup>6</sup> *Telehealth NPRM*, ¶129.

experiment with new programs that have the potential to generate substantial benefits for low-income consumers, and ultimately all Americans.

AARP believes that the generation of new funds to support the telehealth pilot is appropriate, however, AARP recommends that the Commission expand the contribution base to include broadband services.<sup>7</sup>

The *Telehealth NPRM* is also instructive on matters related to the proposed USF cap as it illustrates elements of the digital divide that still need to be addressed—the lack of broadband deployment and broadband service affordability. The *Telehealth NPRM* states the following regarding the availability and affordability of residential broadband services:

*Lack of residential broadband Internet access service for patients is also cited as a key obstacle for health care providers and patients in adopting connected care services. In one survey, for example, 36% of respondents stated that lack of patient access to telehealth technology was a key barrier to the adoption of telehealth. Patient broadband Internet access service is therefore an important factor that drives health care providers' decisions on whether to invest in connected care options for patients. Other Americans may have a home broadband connection that is not sufficient for connected care services, or lack the routers and wireless capability needed for connected care services. Finally, for many Americans, the cost of connected care services, including broadband connectivity costs, may serve as an obstacle to the adoption of connected care services.*<sup>8</sup>

Thus, the *Telehealth NPRM* illustrates the ongoing deficiencies with broadband deployment and adoption, with both the lack of service availability and high prices for broadband connectivity preventing individuals in need of healthcare services from being able to take advantage of telehealth technologies. Capping the Universal Service Fund would not remedy the problems with broadband availability and adoption that the *Telehealth NPRM* identifies.

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<sup>7</sup> AARP Comments, July 15, 2019, pp. 10-11.

<sup>8</sup> *Telehealth NPRM*, ¶13, emphasis added.

## **The *NPRM* ignores the ongoing contribution base problem**

In opening comments AARP pointed to the persistent problem of a contribution base that is backward-looking, unfair, and unsustainable.<sup>9</sup> Other parties also point to the need for the Commission to correct this fundamental problem with funding Universal Service programs.

Smith Bagley, Inc. states:

SBI suggests that the Commission should refocus this rulemaking to explore ways to spread the burden of funding USF in a more equitable way, such as, for example, by increasing the contribution base. It is becoming untenable for the Commission to insist on a policy that relies overwhelmingly on contributions from interstate voice service revenues to fund USF programs that increasingly promote the deployment of advanced broadband services.<sup>10</sup>

NTTA states:

The Commission could investigate whether expanding this base to include, for example, broadband internet access service revenues is a reasonable method to address contributions reform.<sup>11</sup>

New America's Open Technology Institute, like AARP, comments on the unfair, backward-looking, and unsustainable problems surrounding the current contribution base:

The contribution system is also unfair. Landline and wireless phone customers should not shoulder the burden of funding the USF alone; the Commission should be continuing discussions that began over a decade ago regarding how to expand the contribution base to include broadband users. Broadening the base would reduce the burden on landline and wireless phone customers, add a small fee on broadband users, and improve program efficiency and sustainability. Further, broadband users benefit from the network effects generated by the USF, yet they reap those benefits without paying into the fund. Last, fees on older technologies should not sustain new technologies, because (as is happening now) the subsidy could eventually die off and starve the USF program.<sup>12</sup>

Public Knowledge and National Hispanic Media Coalition also point to broadening the contribution base:

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<sup>9</sup> AARP Comments, pp. 10-13.

<sup>10</sup> Smith Bagley, Inc. Comments, p. iii.

<sup>11</sup> NTTA Comments, p. 9.

<sup>12</sup> New America's Open Technology Institute Comments, p. 17.

The Commission is not wrong to be worried about the current financial trend of the USF, but the solution that satisfies its universal service mission is to broaden the contribution base, thereby lowering the contribution rate.<sup>13</sup>

Alaska Communications provides an eloquent statement of the problem and the logical solution:

As the Commission observes, the Act requires that contributions be assessed in a manner that it “equitable and nondiscriminatory.” The current mechanism is not that. As the Commission has acknowledged, today’s market is characterized by rapidly declining telecommunications services revenues, with much of the traffic being replaced by IP-based services that may or may not be required to contribute to universal service. In the IP environment, e-mails, text messages and social media posts have replaced calls, pages and other traditional telecommunications transmissions. Indeed, it has been a pillar of Commission policy for many years to catalyze the nation’s ongoing transition from traditional telecommunications services to a broader array of modern, packet-switched broadband and information services. And, the Commission has increasingly used its universal service mechanisms to support the availability and affordability of broadband and deployment of associated packet-switched, next-generation facilities. The Commission now should acknowledge the logical conclusion to that process: that it is time to expand the pool of contributors to reflect the diversity of modern communications services.<sup>14</sup>

Gila River Telecommunications Inc., in its support of expanding the contribution base, cites to

AARP’s 2012 evaluation of the unfairness of the existing contribution mechanism:

Moreover, the mechanism now places the cost of universal service on those Americans that still utilize telecommunications services, such as older American, instead of spreading the costs across all users of communications services. As the AARP noted in comments filed in this docket in 2012, “[o]lder Americans subscribe to both wireline and wireless telephones at higher combined rates than other age groups. As a result, older Americans shoulder a disproportionate share of the contribution burden under the Commission’s current approach to funding universal service.” The data underlying the AARP analysis holds true today. Older Americans, those 65 and up, are more likely to subscribe to both wireline and wireless services than any other group, thereby increasing their contribution burden under the existing mechanism.<sup>15</sup>

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<sup>13</sup> Public Knowledge and New Hispanic Media Coalition Comments, p. 36.

<sup>14</sup> Alaska Communications Comments, p. 19.

<sup>15</sup> Gila River Communications, Inc. Comments, p. 8, footnotes omitted.

As AARP noted in its July 15, 2019 comments, this unfairness has persisted over the past seven years, and continues today.<sup>16</sup>

There is no question that now is an appropriate time for this Commission to address the problem with the contribution base. By expanding the contribution base the Commission can ensure that the Universal Fund will be viable and capable of supporting the Commission's statutory objectives regarding universal access to advanced and affordable telecommunication services.

### **The budgets of the E-rate and Rural Health Care programs should not be combined**

In opening comments AARP pointed to the fundamentally different missions of the Rural Healthcare and E-Rate programs. AARP indicated that the problems that E-rate and Rural Healthcare programs are working to solve cannot be easily weighed against one another's goals, or the goals of other programs, such as High Cost or LifeLine. Each of these programs provides a critical component of an overall approach to fulfilling the statutory universal service objectives.<sup>17</sup> Numerous comments on this matter were filed by individual schools, school districts, and advocates for education. AARP strongly encourages the Commission to carefully consider these comments as they clearly show the importance of maintaining support for the E-Rate program and not combining that program with Rural Healthcare. Arizona Department of Education states:

Each program that is a part of USF plays an indispensable role in achieving the ultimate goal of USF, access to communication services for every American. The proposal to place a universal cap on these programs is a direct assault on the FCC's mission of bridging the digital divide. The proposal to place a sub-cap on the E-Rate and Rural Health Care funds is particularly troubling. None of the USF programs should be pitted against each other and forced to vie for a piece of the pie. Moreover, the FCC's request

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<sup>16</sup> AARP July 15, 2019 Comments, pp. 12-13.

<sup>17</sup> AARP July 15, 2019 Comments, p. 16.

for comment on "prioritizing the funding among the four universal service programs" violates Congress's legislative intent in enacting the USF.<sup>18</sup>

Farmington Municipal Schools states:

Simply stated, the power of E-Rate drives the educational futures of our students. It creates opportunity for career and college readiness by allowing our students and staff to expand learning beyond our school district and state's borders. Any effort by the FCC to restrict E-Rate funding by imposing a cap on funding, compromises the future of our students. Rather than limiting funds, the FCC should be using every effort possible to invest in the future of our youth.<sup>19</sup>

New Lebanon Central School District points to the problem of competition between E-Rate and Rural Healthcare:

E Rate works. The proposed changes eviscerate that good work by forcing often impoverished communities to choose between their sick and injured and their children. Other nations have successfully overcome fiscal obstacles to provide broadband access to all. We have not. America is better than that.<sup>20</sup>

Illinois' Olympia Community Unit School District #16 notes that caps are inappropriate both due to the contravention of the intent of Congress, when it created separate programs in 1996, and due to the existing E-Rate programs to meet the Commissions own objectives:

The FCC has not achieved E-Rates goal of 1 Gbps per 1,000 students set forth in the E-Rate Modernization Order, and capping funding at a time when we need it most in rural America will stop progress toward connectivity; cutting off rural schools and communities from services; and work against the very reason E-Rate was created.<sup>21</sup>

The Commission should not place the E-Rate program at risk by either combining E-Rate and Rural Healthcare, or by placing an overall cap on the fund.

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<sup>18</sup> Arizona Department of Education Comments, p. 2.

<sup>19</sup> Farmington Municipal Schools Comment, p. 1.

<sup>20</sup> New Lebanon Central School District Comments, p. 1.

<sup>21</sup> Olympia Community Unit School District #16 Comments, p. 1.

## **Capping the Universal Service Fund will not close the Homework Gap**

In opening comments AARP discussed the lack of progress in closing the Homework Gap as a reason to not impose a cap.<sup>22</sup> Other parties pointed to the Homework Gap as a problem that needs to be solved.<sup>23</sup> The record supports refraining from capping the Universal Service Fund due to the Commission’s lack of progress in closing the homework gap.

## **Parties in favor of a cap do not provide reasonable support for their position**

A few parties indicate that they are supportive of a cap. However, AARP finds that those parties’ comments supporting an overall cap are unconvincing and based on misstatements of fact and erroneous assumptions. For example, Professor Daniel Lyons states that the “structural flaw” associated with the Universal Service Fund is associated with the support for four independent initiatives, which have pursued their separate missions “without regard to cost.”<sup>24</sup> However, as noted in the *NPRM*, and ultimately acknowledge by Professor Lyons, three of the four existing programs already operate under individual caps.<sup>25</sup> Professor Lyons also alludes to the ability of a hard cap to “wring inefficiencies out the system.”<sup>26</sup> But individual caps and effective program management can accomplish this same objective. Professor Lyons points to the rise in the USF surcharge on customer bills as a matter that needs to be fixed. AARP agrees, but notes that there is another way to fix this problem—reforming the contribution base.<sup>27</sup> Dr. Lyons notes that the contribution base has been eroded due to “technological progress.”<sup>28</sup>

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<sup>22</sup> AARP Comments, pp. 6-7.

<sup>23</sup> Common Sense Kids Action Comments, p. 6; ITTA Comments, p. 6; NEA Comments, p. 7; NTTA Comments, p. 6; New America’s Open Technology Institute, pp. 6-7; Public Knowledge and The National Hispanic Media Coalition Comments, p. 4.

<sup>24</sup> Comments of Daniel Lyons, p. 1.

<sup>25</sup> *NPRM*, ¶¶4-8; Comments of Daniel Lyons, p. 2.

<sup>26</sup> Comments of Daniel Lyons, p. 3.

<sup>27</sup> AARP Comments, p. 10.

<sup>28</sup> Comments of Daniel Lyons, p. 1.

However, rather than reforming the contribution base, Dr. Lyon's proposed solution is for Congress to pass legislation to bring Universal Service Funding into the Congressional appropriations process.<sup>29</sup> AARP would also welcome Congressional action that would designate appropriate resources to solving the persistent problems of the lack of availability of affordable and high quality voice and broadband services, as addressed by existing FCC universal service programs. However, given the persistent lack of action on the part of Congress on this matter, the FCC's universal service programs appear to be the only alternative to achieve these universal service objectives (which were designated by Congress as the FCC's responsibility).

Absent a change in law, which Professor Lyons admits is "beyond the scope of this proceeding," Professor Lyons indicates that a "hard cap is a good second-best alternative."<sup>30</sup> AARP disagrees. The best way to fix the problem with both the growing surcharge, and the sustainability of universal service programs, is to expand the contribution base.

Mark Jamison also supports an overall cap on universal service spending.<sup>31</sup> His comments reveal, however, one of the problems that an overall cap on funding would likely exacerbate. Mr. Jamison states that the absence of a cap results in a problem associated with certainty of funding:

My understanding from speaking with USF recipients over the years is that they find planning difficult because they are unsure how much money might be available in any given year. And they find themselves making repeated efforts to ensure that the funds they seek will be available.<sup>32</sup>

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<sup>29</sup> Comments of Daniel Lyons, p. 2.

<sup>30</sup> Comments of Daniel Lyons, p. 3.

<sup>31</sup> Comments of Marc Jamison, p. 1.

<sup>32</sup> Comment of Marc Jamison, p. 2.

Given this problem, it is difficult to reconcile an overall cap with the goal of providing certainty regarding the distribution of funds. As Mr. Jamison notes, an overall cap would result in individual USF programs competing with one another,<sup>33</sup> thus fluctuations in annual priorities could result in program cuts on short notice, which is envisioned by the *NPRM*.<sup>34</sup> The existence of a cap would be more likely to increase uncertainty regarding the availability of funds.

Sarah Oh and Scott Wallsten also support a cap on the Universal Service Fund.<sup>35</sup> They begin their analysis with a misstatement of fact. They allege that “The Fund largely operates without a budget cap.”<sup>36</sup> As noted in the *NPRM*, budget caps are already in place for three of the four existing USF programs,<sup>37</sup> and all programs are also operating under budget.<sup>38</sup> Drs. Oh and Wallsten then launch into an extensive discussion of the history of the USF program, which points to numerous reports by the GAO, CRS, and OMB that identify corrective measures for the FCC’s Universal Service Fund. However, none of the recommendations or Executive Actions identified in the reports cited by Drs. Oh and Wallsten point to an overall cap as being an appropriate course of action.<sup>39</sup>

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<sup>33</sup> Comments of Marc Jamison, p. 1.

<sup>34</sup> *NPRM*, ¶120.

<sup>35</sup> “The Universal Service Fund Needs a Budget,” Comments of Sarah Oh and Scott Wallsten.

<sup>36</sup> Comments of Sarah Oh and Scott Wallsten, p. 2.

<sup>37</sup> *NPRM*, ¶¶5-7.

<sup>38</sup> *NPRM*, ¶1.

<sup>39</sup> “Additional Action Needed to Address Significant Risks in FCC’s Lifeline Program,” GAO 17-538, pp. 64-65; “FCC Has Reformed the High-Cost Program, But Oversight and Management Could be Improved,” GAO 12-738, p. 25; “Telecommunications: Improved Management Can Enhance FCC Decision Making for the Universal Service Fund Low-Income Program,” GAO-11-11, p. 42; “FCC Should Evaluate the Efficiency and Effectiveness of the Lifeline Program,” GAO-15-335, p. 35; “Rural Broadband: The Roles of the Rural Utilities Service and the Universal Service Fund,” CRS Report, June 25, 2013; “Universal Service Fund: Background and Options for Reform,” CRS Report, June 30, 2011.

In opening comments AARP noted that the lack of information regarding the availability of broadband facilities argued against capping the Universal Service Fund.<sup>40</sup> Drs. Oh and Wallsten state that absent that knowledge, “how can we *not* cap” the fund?<sup>41</sup> AARP believes that the American Library Association provides a succinct explanation as to why Drs. Oh and Wallsten’s proposal to “cap first, ask questions later” is inappropriate:

At the outset of this Notice the Commission states its intent to seek comments on how a cap on the USF could “enable the Commission to evaluate the financial aspects of the four USF programs in a more holistic way, and thereby better achieve the overarching universal service principles Congress directed the Commission to preserve and advance.” It is, of course, healthy to periodically evaluate program needs and funding. However, the Commission does not need a cap on the USF to enable it to conduct such an evaluation. *In fact, establishing an overall cap first potentially compromises or unduly influences the outcome of such an evaluation. For example, what if an evaluation shows there is no need for a cap? Enacting a cap before an evaluation places the “cart before the horse.”*<sup>42</sup>

In summary, the parties favoring a cap do not provide reasonable support for their recommendations.

## **Conclusion**

AARP opposes the *NPRM*’s proposal to cap universal service programs, and the opening comments provide ample support for this position. Given the shortfalls evident when considering existing programs at existing funding levels, the Commission should develop policies and programs that will result in the satisfaction of the statutory objectives regarding the deployment of advanced telecommunication services, and which also ensure reasonable rates for those advanced services. Until the Commission closes the digital divide, ensures affordable access to advanced telehealth services, closes the homework gap, and also satisfies Goal No. 1

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<sup>40</sup> AARP Comments, pp. 2-3.

<sup>41</sup> Comments of Sarah Oh and Scott Wallsten, p. 10.

<sup>42</sup> Comments of the American Library Association, pp. 1-2, emphasis added.

from *The National Broadband Plan*, the Commission should be focused on refining existing programs and determining the need for new universal service programs, especially in light of evidence that large numbers of Americans do not have access to affordable and high-quality broadband services. The Commission should also establish a more equitable and sustainable method of funding new and existing universal service programs by expanding the contribution base.